



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Office of  
Proceedings  
Proceedings Clerk

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PETER BECK,

Complainant,

v.

BJORN HENRY JONASSON,

Respondent.

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CFTC Docket No. 08-R027

**ORDER OF DISMISSAL**

**Procedural History**

In February of 2008, Peter Beck filed a complaint seeking reparations in the amount of \$88,107.40 for losses that he sustained in foreign currency and S&P 500 index trading between March 2006 and August 2007.<sup>1</sup> His complaint generally alleged fraud and sought to join eleven parties as respondents.<sup>2</sup> The Office of Proceedings narrowed the eleven down to seven<sup>3</sup> before forwarding the

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<sup>1</sup> See generally Case Presentation, dated February 26, 2008, and attached account statements.

<sup>2</sup> Commodity Futures Trading Commission Reparations Complaint Form, Respondents, filed February 28, 2008.

<sup>3</sup> The seven were: David Joseph Condon, Ikon Global Markets, Inc., Diwakar Jagannath, Bjorn Henry Jonasson, Lee Francis Snyder, Spectrum Asset Management Corp., and Zaner Group, LLC. Notice and Order, dated August 4, 2008, at 1. The others were rejected for a variety of reasons. The Office of Proceedings determined that we had no jurisdiction over three; one was rejected due to an inadequate explanation of how it was responsible for Beck's losses. See Letter to Peter Beck from the Office of Proceedings, dated May 13, 2008, at 1.

complaint. As the case continued, six of the seven settled.<sup>4</sup> This left only the defaulting Jonasson,<sup>5</sup> an unregistered individual whose whereabouts are unknown.<sup>6</sup> Consequently, in December of 2008, we instituted a default proceeding to consider Beck's claim against Jonasson.<sup>7</sup>

In our order instituting a default proceeding, we addressed in detail the deficiencies of Beck's complaint as it relates to Jonasson.<sup>8</sup> In brief, the complaint states no facts – not even a lucid general allegation – that Jonasson was involved in a fraud.<sup>9</sup> Pursuant to the default procedures delineated in Rule 12.22(b),<sup>10</sup> we

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<sup>4</sup> See Order Instituting a Default Proceeding, dated December 24, 2008, at 1. We incorporate the Order Instituting a Default Proceeding and append it to this order.

<sup>5</sup> Jonasson did not answer the complaint. See 17 C.F.R. §12.22(a). During the relevant period, Jonasson was an associated person and a principal of Spectrum Asset Management, which is a registered commodity trading advisor and commodity pool operator. National Futures Association BASIC, <http://www.nfa.futures.org/BasicNet/>.

<sup>6</sup> We have repeatedly served Jonasson at his address of record in Bangkok, Thailand. He has not received any of our orders since he moved without leaving a forwarding address. See, e.g., Letter to Commodity Futures Trading Commission from FedEx Corporation, dated November 7, 2008.

<sup>7</sup> Order Instituting a Default Proceeding.

<sup>8</sup> *Id.* at 5-13.

<sup>9</sup> *Id.*

<sup>10</sup> In relevant part, the rule states:

. . . [an] Administrative Law Judge . . . *may* thereafter enter findings and conclusions concerning the questions of violations and damages and, *if warranted*, enter a reparation award against the non-responding party. If the facts which are treated as admitted are considered

(continued...)

afforded Beck an opportunity to produce the additional materials and testimonial evidence necessary to support a default award. Further, we specifically directed him to furnish the trading records for the account that bore the substantial majority of his losses.<sup>11</sup>

### **Beck's Response**

Beck's response<sup>12</sup> is unfortunate, consisting of argument instead of

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insufficient to support a violation or the amount of reparations sought, the . . . Administrative Law Judge may order production of supplementary evidence from the party not in default and *may* enter a default order and an award based thereon.

17 C.F.R. §12.22(b) (emphasis added).

<sup>11</sup> Order Instituting a Default Proceeding at 13-14. We noted that Beck attached trading records to his complaint for an account opened with \$10,000. However, the bulk of his losses occurred in an account opened some weeks later for \$100,000. Jonasson is alleged to have had something to do with this latter account, of which we have no record. *Id.* at 13.

<sup>12</sup> Beck submitted two statements. Letter to the Court from Peter Beck, dated January 4, 2009 ("Letter to the Court"); Letter to the Office of Proceedings from Peter Beck, dated January 1, 2009 ("Letter to Proceedings"). He also submitted a previously filed motion. Motion for Postponement of Hearing, dated December 4, 2008 ("Motion"). In submitting it again, Beck displays a persistent degree of confusion. He complains: "My Dec. 4 Motion for **Postponement** of Hearing has not been addressed!" Letter to Proceedings at 1 (emphasis in original). He additionally asserts "**No reference was made to my earlier Motion so it appears that [the Court] has not read it.**" *Id.* at 4 (emphasis in original). The motion to which he refers sought a postponement of an oral hearing on Beck's complaint that was scheduled for January 13, 2009. Order and Notice of Hearing, dated October 29, 2008, at 2. The hearing was set at a time when an additional four respondents – none of whom were in default – remained in the case. *Id.* at 1. After the non-defaulters settled, we cancelled the hearing. Order Vacating Order and Notice of Hearing, dated December 8, 2008, at 1. Since this

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evidence. Indeed, it drips with vitriol, displaying contempt for the agency<sup>13</sup> and its adjudicative processes.<sup>14</sup> Not only does he not include the court-ordered trading records,<sup>15</sup> he readily admits that he has no evidence to support a claim against Jonasson.<sup>16</sup> Nevertheless, he wants an indefinite stay of these

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cancellation effectively resulted in “a postponement of all proceedings” – the precise relief that Beck had requested – we dismissed his motion as moot. *Id.* See Motion. Thereafter, Beck made several telephone inquiries to the Court at which time the disposition of the motion was additionally explained to him.

<sup>13</sup> Beck exclaims:

I trust that you are well aware how the financial alchemists and our regulatory and legal guardians (including SEC, CFTC, Home [sic] Security etc.) have betrayed the public and sold a depression to the world. No profession seems capable of policing its own members, while the posturing of the guardians has been costly in money and credibility. At 85, fortunately without issue, should I care?

Letter to the Court.

<sup>14</sup> Beck dismisses the Order Instituting a Default Proceeding as “obtuse” and “irrelevant.” Letter to Proceedings at 1.

<sup>15</sup> Here too Beck exhibits confusion. See Letter to Proceedings at 4. He apparently failed to comprehend our explanation that he had not submitted trading statements reflecting the bulk of his losses. Order Instituting a Default Proceeding at 13.

<sup>16</sup> Beck writes that “I have never met or communicated with Jonasson so that all allegations ascribed to me against this person [in the Order Instituting a Default Proceeding] are without any basis. . . .” Letter to Proceedings at 2. He also states that “. . . how much (all, none or a fraction) of my losses could or should be ascribed to Jonasson is impossible at this time.” *Id.* at 3.

proceedings in the hope that he might obtain some – by first locating and then somehow interrogating Jonasson.<sup>17</sup>

### **Conclusion**

We **DENY** Beck's request for a stay of proceedings to permit him to scour the globe for Jonasson. As we have noted, Jonasson's whereabouts are unknown and may be unknowable.<sup>18</sup> Moreover, Beck has had more than ample time to try to find him. We note that the majority of Beck's losses occurred in March and April of 2006 – nearly three years ago. The appropriate time for him to begin investigating his grievance, including Jonasson's whereabouts, was before he sued – not after imposing costs on individuals and businesses against which he alleged no claim.<sup>19</sup> Tellingly, he once again chose to forego an opportunity to investigate when he requested no discovery from any respondent. Indeed, it was only after we set a hearing to resolve the matter that he decided that he needed to initiate efforts to locate Jonasson in order to discover evidence against him.<sup>20</sup>

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<sup>17</sup> Beck explains that “[i]f I proceed to locate Jonasson I will certainly present [the Court] with an intelligible notice of the claims brought against him.” Letter to Proceedings at 3-4 (internal quotation marks omitted).

<sup>18</sup> See *supra* note 6.

<sup>19</sup> See Order Instituting a Default Proceeding at 5-13.

<sup>20</sup> See Motion.

Given Beck's admissions that he has no allegations or evidence against Jonasson and has nothing more to submit,<sup>21</sup> we will not enter a default award.<sup>22</sup>

The complaint is **DISMISSED**.<sup>23</sup>

**IT IS SO ORDERED.**

On this 4th day of February, 2009



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Bruce C. Levine  
Administrative Law Judge

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<sup>21</sup> Beck states that he "will not waste more time composing a notice of the claims against Jonasson if Judge Levine will not simply grant a postponement or if I cannot find him." Letter to Proceedings at 4.

<sup>22</sup> *Consteel Erectors, Inc. v. Scharpf's Construction, Inc.*, 2008 WL 4568079, at \*5 n.12 (D. Neb. Oct. 10, 2008) (refusing to enter a default judgment against a defendant on an issue that was not pleaded); *Estate of Botvin ex rel. Ellis v. Islamic Republic of Iran*, 510 F.Supp.2d 101, 103 (D.D.C. 2007) (refusing to enter a default where plaintiffs proffered no evidence of liability and damages and permitting plaintiffs to file "competent written and documentary evidence with the court establishing each element of their particular claims . . . ."); *Snyder v. Snyder*, 2007 WL 894415, at \*10 (D. Minn. Mar. 21, 2007) (refusing to enter a default judgment based upon a complaint that failed to state a claim).

<sup>23</sup> Cf. *In re Global Link Miami Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,391 at 46,783 (CFTC June 26, 1998) ("When the [complainant's] allegations, taken as true, do not establish a violation and there is no indication that further fact-finding would change the outcome, then dismissal of the complaint is required.").



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CFTC Docket No. 08-R027

**ORDER INSTITUTING A DEFAULT PROCEEDING**

In August of 2008, the Office of Proceedings forwarded Peter Beck's complaint as it relates to seven respondents: David Joseph Condon, Ikon Global Markets, Inc., Diwakar Jagannath, Bjorn Henry Jonasson, Lee Francis Snyder, Spectrum Asset Management Corp., and Zaner Group, LLC.<sup>1</sup> By October, Beck had settled with two of them,<sup>2</sup> and we set his claims against the remaining five for oral hearing in accordance with the provisions of 17 C.F.R. §12.312.<sup>3</sup> Shortly thereafter, all of the remaining parties settled<sup>4</sup> except for Jonasson,<sup>5</sup> who is in

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<sup>1</sup> Notice and Order, dated August 4, 2008, at 1.

<sup>2</sup> Order of Partial Dismissal, dated October 3, 2008 (Snyder and Zaner Group).

<sup>3</sup> Order and Notice of Hearing, dated October, 29, 2008.

<sup>4</sup> Order of Partial Dismissal, dated November 17, 2008 (Ikon Global Markets and Jagannath); Order of Partial Dismissal, dated December 4, 2008 (Condon and Spectrum Asset Management).

<sup>5</sup> During the relevant period, Spectrum Asset Management was a registered commodity trading advisor and commodity pool operator. Jonasson was an  
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default.<sup>6</sup> Therefore, we vacated our order setting the oral hearing<sup>7</sup> and now institute a default proceeding to consider Beck's claim against Jonasson.

Rule 12.22(a) provides that when considering whether a default judgment is supported by the record, we should treat the respondent's default as an admission of the complaint's allegations.<sup>8</sup> However, a default judgment pursuant to this regulation is not a purely procedural sanction.<sup>9</sup> Rather, it is the successful culmination (from the complainant's perspective) of streamlined fact finding meant to result in a merits-based determination. Consequently, when we

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associated person and a principal of the firm. National Futures Association BASIC, <http://www.nfa.futures.org/BasicNet/>.

<sup>6</sup> Jonasson did not answer the complaint. See 17 C.F.R. §12.22(a).

<sup>7</sup> Order Vacating Order and Notice of Hearing, dated December 9, 2008.

<sup>8</sup> Rule 12.22(a) states:

Failure timely to respond to a complaint . . . as required by §§12.16 and 12.20 of these rules . . . shall be treated as an admission of the allegations of the complaint . . . by the non-responding party, shall constitute a waiver by such party of any decisional procedure afforded by these Rules on the facts set forth in the complaint . . . and shall result in the institution of a default proceeding.

17 C.F.R. §12.22(a).

<sup>9</sup> *Novofastovsky v. Osadchy*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,060 at 49,557 (CFTC Mar. 27, 2000). Cf. *In re Wnukowski*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,234 at 58,061 (CFTC May 3, 2006).



consider the propriety of a default judgment, not every allegation in the complaint is deemed true. Rather, only allegations of well-pled facts receive that treatment.<sup>10</sup>

Allegations of fact are not “well pled” merely because they are intelligible. Rather, the allegation must be sufficiently clear and specific. In addition, it must not be: (1) made indefinite by other allegations in the same pleading, (2) made erroneous by the same pleading, (3) contrary to facts of which we will take judicial notice, (4) insusceptible of proof by legitimate evidence, or (5) contrary to the uncontroverted material in the file of the case.<sup>11</sup> For instance, some cases are simply absurd – witness a recent complaint in Nebraska where a state senator sued “God” to stop terrorist attacks.<sup>12</sup> Though God did not answer the complaint, a default judgment was not entered against Him.<sup>13</sup>

Further, we do not take as true a complaint's allegations of law, nor are we bound by legal theories on which the pleading rests.<sup>14</sup> Instead, we draw our own

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<sup>10</sup> *Cochran v. Amadio*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,962 at 49,076 n.5 & 49,079 n.26 (CFTC Jan. 4, 2000).

<sup>11</sup> *Id.* at 49,079 n.26.

<sup>12</sup> See *Chambers v. God*, No. 1075 (Neb. Dist. Ct., Sept. 14, 2007), <http://blog.wired.com/27bstroke6/files/chambersversusgod.pdf>.

<sup>13</sup> *Chambers vs. God Lawsuit Tossed Out*, WOWDT NBC Channel 6 News, (Oct. 15, 2008), <http://www.wowt.com/news/headlines/31014729.html>.

<sup>14</sup> *Palomares v. Bradshaw*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,268 at 50,620 n.12 (CFTC Oct 2, 2000).

legal conclusions.<sup>15</sup> Thus, complaints may also fail as a matter of law – despite sufficiently well-pled facts.

The fact that Jonasson is in default does not mean that Beck is "an automatic winner."<sup>16</sup> Beck is still faced with the burden of proving his claim through well-pled facts set forth in the complaint, and if they are insufficient to support a default award, supplementary evidence.<sup>17</sup>

In relevant part, Section 14(a)(1) of the Commodity Exchange Act provides that any person "*complaining of any violation of any provision of this chapter, or any rule, regulation, or order issued pursuant to this chapter*" may sue in reparations for "actual damages proximately caused by such violation" within two

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<sup>15</sup> *Id.*

<sup>16</sup> *Wnukowski*, [2005-2007 Transfer Binder] ¶30,234 at 58,061. See also *Palomares v. Bradshaw* [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶30,717 at 61,295 n.16 (CFTC Dec. 7, 2008).

<sup>17</sup> Rule 12.22(b) states:

. . . [an] Administrative Law Judge . . . may thereafter enter findings and conclusions concerning the questions of violations and damages and, if warranted, enter a reparation award against the non-responding party. If the facts which are treated as admitted are considered insufficient to support a violation or the amount of reparations sought, the . . . Administrative Law Judge may order production of supplementary evidence from the party not in default and may enter a default order and an award based thereon.

<sup>17</sup> C.F.R. §12.22(b). See *Wnukowski*, [2005-2007 Transfer Binder] ¶30,234 at 58,061.

years after the cause of action accrues.<sup>18</sup> Accordingly, to assess whether a complaint's factual allegations are sufficient to support a default award, we must first determine the legal nature of the claim(s) being made. With respect to Beck's case against Jonasson, this is a daunting task. He makes no obvious claim of wrongdoing against Jonasson; his grievances are primarily directed to the conduct of Craig Erdmann.

Beck accuses Erdmann of "fraudulent solicitation" in that he convinced Beck to invest \$100,000.00 in a convergence trading strategy.<sup>19</sup> According to the complaint, Erdmann described an unusual opportunity to make a return of five percent in as little as six weeks and said the margin was "locked in."<sup>20</sup> The term "locked in" arguably suggests a riskless transaction.<sup>21</sup>

However, Erdmann was not registered with the Commission either at the time of the alleged solicitation or subsequently, and the Office of Proceedings correctly determined that we have no jurisdiction over him.<sup>22</sup> Thus, he was not

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<sup>18</sup> 7 U.S.C. §18(a)(1) (emphasis added).

<sup>19</sup> See Case Presentation, dated February 26, 2008 ("Complaint"), at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Munnell v. Paine Webber*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,313 (CFTC Oct. 8, 1986) (holding that "Guarantees of profitability are inherently fraudulent because, given the uncertainties in the market, they misrepresent the likelihood of profiting from commodity futures and options transactions, as well as the substantial risks of investing in commodity futures and options.").

<sup>22</sup> 7 U.S.C. §18(a)(1) (stating that "Any person complaining of any violation . . . by any person who is registered under this chapter may . . . apply to the  
(continued...)

included among the respondents forwarded to us for adjudication.<sup>23</sup> We are left with an unusual situation in which the specific facts pleaded by the complainant tend to implicate solely a non-party.

We have tried to reasonably link Beck's claims against Erdmann with the other respondents. We cannot. Though Erdmann had some relationship with Spectrum Asset Management and its president, David Condon, we do not know its extent. We have no evidence of a relationship between Erdmann and Jonasson; indeed, they were on opposite sides of the world during the solicitation of which Beck complains.<sup>24</sup> Despite the paucity of facts, Beck chose not to conduct any discovery.

With respect to Beck's claim against Jonasson, Beck appears to be alleging fraud in some generic sense.<sup>25</sup> We cannot reach this conclusion from the complaint, which never links Jonasson to fraud; rather, we look to Beck's most

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Commission for an . . . [award]."). See Letter to Peter Beck from the Office of Proceedings, dated March 26, 2008, at 1.

<sup>23</sup> Notice and Order, dated August 4, 2008, at 1.

<sup>24</sup> Complaint at 3 (stating that "Jonasson . . . was opening a Spectrum office in Thailand.").

<sup>25</sup> Motion for Postponement of Hearing, dated Dec. 4, 2008, (stating that ". . . Mr. Jonasson appears to have significant responsibility in the defrauding of the [c]omplainant in this matter. . . .").

recent filing.<sup>26</sup> What type of fraud, or how the fraud was committed, or the losses proximately caused thereby, are all left unaddressed.

Claims of fraud have legal elements. Beck does not have to plead them specifically, but he must plead facts that allow us to infer a legally cognizable claim. Here, the only facts remotely pleaded by Beck are against Erdmann for a claim of fraudulent solicitation. We are left to guess that Beck intends to plead that Jonasson was involved in Erdmann's fraudulent scheme. Given no better alternative, we discuss the law and the facts in that context.

Section 4b of the Commodity Exchange Act<sup>27</sup> and Rule 33.10<sup>28</sup> respectively prohibit fraudulently soliciting customers to trade futures and options. To find fraudulent inducement, Beck must prove that Jonasson (1) acted with scienter,<sup>29</sup> and (2) made a misrepresentation of a material fact,<sup>30</sup> that was (3) reasonably

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<sup>26</sup> *Id.*

<sup>27</sup> 7 U.S.C.A. §6b

<sup>28</sup> 17 C.F.R. §33.10.

<sup>29</sup> See *Hammond v. Smith Barney, Harris Upham & Co., Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,617 at 36,659 (CFTC Mar. 1, 1990) (holding that the complainant must show that a respondent's wrongful acts were committed intentionally or with a reckless disregard for his duties under the Commodity Exchange Act).

<sup>30</sup> See *Gordon v. Shearson Hayden Stone, Inc.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,016 at 23,981-982 (CFTC Apr. 10, 1980) (holding that whether a misstatement or omitted fact is material turns on whether a reasonable investor would regard the fact as significant in making an investment decision).

relied on by Beck,<sup>31</sup> and that (4) proximately caused the injury.<sup>32</sup> Further, Beck must furnish enough evidence to permit the court to estimate the damages proximately caused with reasonable certainty.<sup>33</sup> Finally, each element must be supported by a preponderance of the evidence.<sup>34</sup>

Against this backdrop, it is obvious that Beck has not pleaded in a manner that would permit us to enter a default judgment for fraudulent inducement – or for anything else. Beck’s complaint mentions Jonasson exactly four times. First, Beck says that Jonasson’s curriculum vitae was included in the introductory

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<sup>31</sup> See *Vetrono v. Manglapus*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,702 at 30,984-985 (CFTC Aug. 6, 1985) (rejecting a fraud claim where the complainant failed to demonstrate that he had relied on an alleged material misrepresentation); *Jakobsen v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶22,812 at 31,392 (CFTC Nov. 21, 1985) (holding that reliance is concerned with the causal connection between the misrepresentations and the loss and that a finding of non-reliance suggested the customer would have acted no differently had he known the truth).

<sup>32</sup> See *Muniz v. Lassila*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,225 at 38,650 (CFTC Jan. 17, 1992) (holding that there must be a cause-and-effect relationship between a violation of the Commodity Exchange Act and damages claimed in reparations).

<sup>33</sup> *LeSueur Creamery, Inc. v. Haskon, Inc.*, 660 F.2d 342, 349-50 (8th Cir. 1981) (holding that when the record demonstrates a causal link between a respondent’s violation and a loss for the complainant, the amount of the loss need not be proved with mathematical precision, rather “proof to a reasonable certainty is sufficient.”).

<sup>34</sup> *In re Citadel Trading Co.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,082 at 32,190 (CFTC May 12, 1986) (holding that “[T]he judge must carefully review the record in an effort to separate appearance from reality. The issue is not what could have happened, rather it is what the preponderance of the evidence shows most likely did happen.”).

materials given to Beck by a third party.<sup>35</sup> Second, Beck refers to a conversation between himself and David Condon in which Condon blamed Jonasson for “the bad trades on margin while Condon was hospitalized.”<sup>36</sup> Third, Condon apparently forced Jonasson to resign in November of 2006.<sup>37</sup> Finally, Beck relates another comment by Condon “blaming Jonasson for making the convergence trades.”<sup>38</sup>

We note that Beck *never independently claims that Jonasson did anything wrong or even that Beck had any direct dealings with him.* The fact that Condon believes his co-worker made “bad trades on margin” is irrelevant to whether Beck believes it. Moreover, Condon’s allegation (as set forth in Beck’s allegation) is unintelligible. We do not know what “bad trades on margin” means. If it means nothing more than “Jonasson made trades that lost money” then clearly Beck has no claim; if he did, everyone who has lost money in the stock market over the last six months would have an equally valid claim against any transacting broker. Similarly, though Beck does not personally allege or support the fact, we freely accept that Jonasson made convergence trades. However, Beck’s primary

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<sup>35</sup> See Complaint at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

investment with Spectrum was to be in convergence trading;<sup>39</sup> certainly, there is nothing fraudulent about Jonasson trading as directed.

Moreover, even if we could somehow interpret “bad trades on margin” to involve a fraud, Beck does not attempt to identify the extent of his losses proximately caused by them. Rather, Beck has simply claimed that he suffered losses, and that Condon says Jonasson made bad trades. This is clearly insufficient. Without a connection between the two – at the very least a direct allegation, accompanied by factual support, that the bad trades caused a specified portion of Beck’s losses – we cannot begin to estimate the extent of the harm caused by the trades. Indeed, we do not even know if Jonasson exclusively traded Beck’s account. If other parties were involved in the trading, then Jonasson might be responsible for only a portion of the losses.

The Commission has held many times<sup>40</sup> that it is critical to the efficient operation of the reparations program that a customer’s complaint “include an intelligible description of the conduct which the complainant alleges to be in violation of the Act.”<sup>41</sup> The Commission has further stated that the Office of Proceedings should not forward to a respondent a complaint that fails to afford

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<sup>39</sup> *Id.* at 1.

<sup>40</sup> *E.g., Hall v. Diversified Trading Systems, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,131 at 41,751 (CFTC July 7, 1994).

<sup>41</sup> Final Rules Relating to Reparations, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,006 at 28,465 (CFTC Feb. 22, 1984).



“intelligible notice of the nature of the claims brought against him.”<sup>42</sup> As we have seen, no intelligible claim is included against Jonasson. Indeed, the complaint makes no such claim against many of the respondents.

More disturbing still is the evidence that in filing his complaint, Beck never intended to take his obligations seriously. “[A] complainant's failure adequately to describe the factual bases for his claims against a respondent can make it virtually impossible for the respondent to submit a responsive answer to the complaint.”<sup>43</sup> For this reason, the Office of Proceedings sent Beck a deficiency letter shortly after it received his complaint.<sup>44</sup> The letter informed Beck that the complaint could not be forwarded as it related to a number of proposed respondents unless Beck provided “a detailed, written explanation regarding how each caused, or is responsible for, [his] loss.”<sup>45</sup>

Beck's response is revealing. For instance, his explanation for including David Condon, Man Financial, Inc., and Ikon Global Markets as proposed respondents was limited to the fact that the Office of Proceedings had written him that these individuals/firms were registered and therefore could be included as respondents.<sup>46</sup> Beck continued by saying:

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Letter to Peter Beck from the Office of Proceedings, dated March 26, 2008.

<sup>45</sup> *Id.* at 1-2.

<sup>46</sup> Letter to the Office of Proceedings from Peter Beck, dated April 1, 2008.

Consequently, I took the liberty of adding these organizations . . . as respondents. I do not know how responsibility for these firms is determined, but obviously they could be responsible as indicated in your Jan. 17 letter.<sup>47</sup>

Despite Beck's "explanation," the Office of Proceedings permitted the complaint against Condon and Ikon Global Markets to proceed.<sup>48</sup>

Beck does not so much as mention Jonasson in his response.<sup>49</sup> This is likely because he was not instructed to do so; the Office of Proceedings mistakenly omitted Jonasson from Beck's laundry list of respondents in the deficiency letter.<sup>50</sup> We assume that absent this mistake, Jonasson would have been included among those respondents that jointly comprised the "deficiency." Regardless, the effect was to give Beck no notice that his complaint was also inadequate as it relates to Jonasson. Given the nature of his response as to

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<sup>47</sup> *Id.* The letter to which Beck refers was sent by the Office of Proceedings in response to a telephone conversation in which Beck apparently requested a reparations package. Only the first page of the letter is included in the file. Letter to Peter Beck from the Office of Proceedings, dated January 17, 2008.

<sup>48</sup> Letter to Peter Beck from the Office of Proceedings, dated May 13, 2008 at 1.

<sup>49</sup> Letter to the Office of Proceedings from Peter Beck, dated April 1, 2008, at 1.

<sup>50</sup> The deficiency letter begins:

This letter acknowledges receipt of your \$250 filing fee and reparations complaint naming David Joseph Condon, Herbert Howell Eames, Jr., Craig William Erdmann, Ikon Global Markets, Inc. d/b/a/ IFSCS USA, Inc., Ric Hayward, Diwakar Jagannath, Man Financial, Inc. d/b/a MF Global, Inc., Lee Francis Snyder, Spectrum Asset Management Corp., and Zaner Group LLC.

Letter to Peter Beck from the Office of Proceedings, dated March 26, 2008, at 1.

other respondents, this lack of notice may well have made no difference. Nevertheless, we now give Beck a chance to supplement his claim against Jonasson.

**Order and Notice**

Pursuant to the default procedures delineated in Rule 12.22(b),<sup>51</sup> we afford Beck an opportunity to produce supplementary evidence in support of his complaint as to Jonasson on all issues of liability and damages. Presently, we have trading records for just one of two accounts. The first account was opened by Beck on March 9, 2006, with \$10,000.00, some weeks prior to the account at issue here. The second account was opened for \$100,000.00, and was created for the previously discussed convergence trading. Without this second set of trading records, Beck cannot prove the existence or the amount of his damages. Accordingly, we **DIRECT** Beck to file all supplemental exhibits in support of his case on or before **January 28, 2009**. His exhibits may contain any submissions that he believes support a default award in light of the guidance provided above, but should include at a minimum the trading records for the \$100,000.00 account on which Beck (via Condon) claims the convergence trade(s) and "bad trades on margin" were made.

Further, **NOTICE** is hereby given that an oral hearing on default will commence at **9:30 a.m.**, on **February 11, 2009**, to give Beck an opportunity to provide oral testimonial evidence in support of this claim. To this end, we

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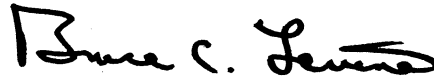
<sup>51</sup> 17 C.F.R. §12.22(b).

**DIRECT** Beck to file, at the time he files his supplemental exhibits, a notice of his intent to participate in the hearing and a list of witnesses, if any. The hearing will be held at:

United States Tax Court  
Courtroom 1013 – 10<sup>th</sup> Floor  
Thomas P. O’Neil Federal Building  
10 Causeway Street  
Boston, Massachusetts 02222.

**IT IS SO ORDERED.**

On this 24th day of December, 2008



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Bruce C. Levine  
Administrative Law Judge